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IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut, *Petitioner,* *vs.* ARTHUR SILBERMAN, CHARLES MOEBIUS, JOSEPH PLAUT, *et al.*, Executors.	No. 190.
ARTHUR SILBERMAN, CHARLES MOEBIUS, JOSEPH PLAUT, *et al.*, Executors, *Plaintiffs-in-Error,* *vs.* WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut.	No. 191.

REPLY BRIEF FOR WILLIAM H. BLODGETT, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, PETITIONER AND DEFENDANT-IN-ERROR.

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TABLE OF CONTENTS.

PAGE

FIRST. The question as to the quality of the Liberty Bonds here involved, in relation to the power of the state of Connecticut to impose a tax upon their transfer by the will of a citizen, is not a local question 3

SECOND. The Supreme Court of Errors of Connecticut construed the succession statute of that state as covering in specific terms the succession to these bonds 4

THIRD. The Liberty Bonds are not the less subject to the succession tax by the state of domicile because they are bonds payable to bearer which can pass from hand to hand 7

FOURTH. Liberty Bonds are not the less subject to a succession tax of the state of domicile of the decedent because they are government obligations 10

FIFTH. In classifying tangible and intangible personal property for the purpose of the determination of constitutional validity of a succession tax, there are public considerations of the highest importance 12

Table of Cases Cited.

	PAGE
Bullen *v.* Wisconsin, 240 U. S. 625	8, 9
Carpenter *v.* Pennsylvania, 17 How. 456	15
De Ganay *v.* Lederer, 250 U. S. 376	7
Foreign-Held Bonds Case, 15 Wall. 300	7
Keeney *v.* New York, 222 U. S. 525	9
Metropolitan Life Ins. Co. *v.* New Orleans, 205 U. S. 395	7
New Orleans *v.* Stempel, 175 U. S. 309	7
Orr *v.* Gilman, 183 U. S. 278	15
People *v.* Home Ins. Co., 29 Cal. 533	7
Red Cross Line *v.* Atlantic Fruit Co., 264 U. S. 109	5
Rhode Island Hospital Trust Co. *v.* Doughton, 270 U. S. 69	9
Selliger *v.* Kentucky, 213 U. S. 200	7
Union Refrigerator Transit Co. *v.* Kentucky, 199 U. S. 194	11
Westinghouse Electric & Mfg. Co. *v.* Los Angeles County, 188 Cal. 491	7
Wheeler *v.* New York, 233 U. S. 434	7

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REPLY BRIEF FOR WILLIAM H. BLODGETT, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, PETITIONER AND DEFENDANT-IN-ERROR.

We desire to reply briefly to the argument of the Executors relating to the power of the State of Connecticut to impose a tax upon the succession to the Liberty Bonds owned by the resident decedent at the time of his death.

We present the following considerations:

FIRST. The question as to the quality of the Liberty Bonds here involved, in relation to the power of the state of Connecticut to impose a tax upon their transfer by the will of a citizen, is not a local question.

SECOND. The Supreme Court of Errors of Connecticut construed the succession statute of that state as covering in specific terms the succession to these bonds.

THIRD. The Liberty Bonds are not the less subject to the succession tax by the state of domicile because they are bonds payable to bearer which can pass from hand to hand.

FOURTH. Liberty Bonds are not the less subject to a succession tax of the state of domicile of the decedent because they are government obligations.

FIFTH. In classifying tangible and intangible personal property for the purpose of the determination of constitutional validity of a succession tax, there are public considerations of the highest importance.

FIRST: The question as to the quality of the Liberty Bonds here involved, in relation to the power of the State of Connecticut to impose a tax upon their transfer by the will of a citizen, is not a local question.

No question of fact was involved in the decision in this case; nor can there be any controversy as to the nature of these bonds. There was no dispute that they were Liberty Bonds. There was no dispute that they were in New York at the time of death. They were concededly in safe deposit boxes and were constantly subject to the control and disposition of the owner who had them there for purposes of convenience and who could take them out of the boxes at any time and move them about either within or without the state at his will.

The Supreme Court of Connecticut did not deal with the quality of these bonds as a local question or one to be determined by its own jurisprudence.

The State of New York has made no attempt to fix a situs of these bonds for any purpose. New York did not impose a tax upon their transfer. The legislature of that State has deliberately adopted the policy of not taxing such intangible property of a non-resident. The State of Connecticut did tax their transfer. The question is exclusively one of the constitutional validity of the Connecticut Succession Tax and its application to these Liberty Bonds.

SECOND: The Supreme Court of Errors of Connecticut construed the Succession Statute of that State as covering in specific terms the succession to these bonds.

The applicable Statute of Connecticut, section 1 of chapter 190 of the Acts of 1923—levied a tax upon "All property and any interest therein owned by a resident of this state" at the time of decease.

The Supreme Court of Connecticut stated that the features of that tax statute were as follows (R. 64):

> "We dwell upon these familiar decisions in order to especially emphasize three features underlying our succession act, and indeed every succession act: (1) The succession to real estate within the state and personal property everywhere is governed by the law of the state of the decedent's domicile; (2) the state exercises this right in virtue of the privilege it accords to its citizens or its domiciled residents of either disposing of their property by will, or, in the event of intestacy, having it descend in accordance with the statute law of the state; (3) a succession tax is not an ad valorem tax, nor to be considered upon the same basis as that tax, it is a privilege tax, an excise tax, such as a franchise tax.
>
> "The decisions and the legal literature upon this subject not infrequently fail to distinguish the succession tax as wholly apart from the ad valorem tax. The taxable situs of the former depends for its jurisdiction upon the domicile of the decedent; the latter upon the situs of the property taxed. The attempt to rest the jurisdiction of each upon the situs of property taxed requires a departure from the underlying principle of the succession tax—the right to receive from the decedent, as we hold, or as many jurisdictions hold, the right to transmit from the decedent."

After reviewing these decisions, the court clearly showed that it considered that the Legislature had intended to cover by its Succession Act the transfer of all of the personal property of the decedent, including the bonds in question.

The Connecticut Supreme Court, not because of any construction of the Connecticut statute which would eliminate these bonds from the property intended to be taxed by the statute, but because of the decision of this court in the *Frick* case, held that the imposition of the succession tax upon the Liberty Bonds was invalid because in violation of the Fourteenth Amendment. It simply deferred to the *Frick* case as the court construed it. The court summarized its conclusions as follows:

> "The same considerations which converted state and municipal securities into tangible personal property necessarily operate to convert United States bonds and treasury certificates into tangible personal property. As such under the *Frick* case they are subject to a transfer tax in New York where they are found and nowhere else."

The case thus falls squarely within the principle of the decision of this court in *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109, where the state court excluded certain contracts from the operation of a state statute under the compulsion, as it thought, of the Federal Constitution. In that case, Justice Brandeis said (p. 120):

> "If that court had construed the Arbitration Law as excluding from its scope controversies which are within the admiralty jurisdiction, the construction given to the state statute would bind us; and there would be no occasion to consider the constitutional question presented. *Quong Ham Wah Co.* v.

Industrial Accident Commission, 255 U. S. 445; *Ward & Gow* v. *Krinsky*, 259 U. S. 503, 510. An expression used by the Court of Appeals lends some color to respondent's contention, 233 N. Y. 373, 381. But a reading of the whole opinion shows that the state court excluded maritime contracts from the operation of the law, not as a matter of statutory construction, but because it thought the Federal Constitution required such action. Compare *State Industrial Commission* v. *Nordenholt Corporation*, 259 U. S. 263. We proceed, therefore, to the consideration of the constitutional question."

The question as to the validity of the tax in relation to the Liberty Bonds is necessarily one for the decision of this court.

THIRD: The Liberty Bonds are not the less subject to the succession tax by the state of domicile because they are bonds payable to bearer which can pass from hand to hand.

We are not here dealing with the power of the states in which the bonds are found to impose a property tax upon them. The cases cited by the Executors in an endeavor to show that the State of the domicile of the owner is without power to impose a tax upon the succession to these bonds upon his death, deal not only with bonds, and bonds payable to bearer, but also with notes and even credits arising out of a local business. These cases deal with the question whether the state in which the debtor lives, or the securities are held in the circumstances stated, may fix a situs there for the purpose of taxation. The logic of these cases is no way limited to bonds, whether corporate bonds or others. Such are the cases of:

Foreign-Held Bonds Case, 15 Wall. 300;
New Orleans v. *Stempel*, 175 U. S. 309;
Metropolitan Life Ins. Co. v. *New Orleans*, 205 U. S. 395;
People v. *Home Ins. Co.*, 29 Cal. 533;
Westinghouse Electric & Mfg. Co. v. *Los Angeles County*, 188 Cal. 491;
Wheeler v. *New York*, 233 U. S. 434;
Selliger v. *Kentucky*, 213 U. S. 200;
De Ganay v. *Lederer*, 250 U. S. 376.

These are the typical cases, the strongest, on the point sought to be made by the Executors. None of them involve inheritance taxes; none of them involve the power

of the state of domicile of the owner to tax the transfer of them by him; in none of them was the fact that they were bonds or bearer securities or governmental obligations determinative.

For the purpose of such property taxation at the place where found, bonds payable to bearer must be placed in the same category as other choses of action which because of origin, or evidence, are held to be there taxable. Their taxability at the place in which they are found is determined not because of their negotiability or because they are easily carried about, but because of their relation to the state in which they are and its power to impose a property tax in view of that relation. These cases in no wise affect the constitutional power of the state of domicile to impose a tax upon the succession to property of the same sort.

The power of the state of Wisconsin, the domicile of the deceased owner, to impose a tax upon the transfer of the following bonds, held outside of Wisconsin and within Illinois at the time of death, was sustained in *Bullen* v. *Wisconsin*, 240 U. S. 625:

75 4% Union Pacific R. R. Co.
35 4% Wisconsin Central Railway Co.
25 4% Chicago, Burlington & Quincy R. R. Co.
75 5% Chicago City Railway Co.
35 4% Joint Northern Pacific Railway Co. and Great Northern Railway Co.
25 4% Atchison, Topeka & Santa Fe Railway Co.

Likewise the power of New York, the domiciliary state, to impose a tax upon the transfer of the following bonds, which were held in New Jersey at the time of death, was sustained in *Keeney* v. *New York*, 222 U. S. 525:

20 4% Pere Marquette R. R. Co.
70 4% Birmingham Belt R. R. Co.
146 5% South Jersey G. E. & T. Co.
70 4% Pittsburgh, Cinn., Chic. & St. L. Ry. Co.
39 4% Cleveland, Cinn., Chic. & St. L. Ry. Co.
10 4% St. Louis & San Francisco R. R. Co.
20 4% St. Louis & San Francisco R. R. Co.
35 4% Kansas City, Fort Scott & Memphis Ry. Co.

This doctrine was reiterated in *Rhode Island Hospital Trust Co.* v. *Doughton*, 270 U. S. 69, where Chief Justice Taft, writing for the whole court said (p. 81):

> "In the matter of intangibles, like choses in action, shares of stock, and bonds, the situs of which is with the owner, a transfer tax of course, may be properly levied by the State in which he resides."

Unless this court is prepared to overrule *Bullen* v. *Wisconsin, supra,* the authority of which is recognized in the *Frick* case, the mere fact that the bonds are bonds or that they are payable to bearer cannot detract from the constitutional power of the State of Connecticut to impose a tax upon the succession to them.

FOURTH: Liberty Bonds are not the less subject to a succession tax of the state of domicile of the decedent because they are government obligations.

Under the settled decisions of this court, Connecticut may impose a tax upon the succession to these bonds unless the fact that they are governmental obligations in some way detracts from the constitutional power. Upon what possible theory can a distinction between governmental and corporate bonds be maintained? Corporate bonds are just as much physically outside the state of domicile as are governmental bonds. Many corporate bonds pass as readily from hand to hand, are as easily and readily dealt in upon the exchanges of this country, and have for all practical purposes the same characteristics, as Liberty Bonds. Liberty Bonds are not legal tender, if this fact were of any importance. Liberty Bonds have their fluctuations in value. But the point is this that in regard to manumission—the facility of handling—the methods of dealing, and, above all, the opportunities for concealment, they are in the same category as corporate bonds.

This court has treated Union Pacific bonds, Chicago, Burlington & Quincy bonds and many other corporate negotiable bonds of the highest class of securities, constantly dealt in and transferred freely from hand to hand, and commonly held in safe deposit boxes, as intangible property for the purposes of a succession tax.

Can it be said that these bonds are intangible, and yet that Liberty Bonds are tangible? Can it be said that the Fourteenth Amendment sanctions the domicile of the owner in imposing a tax upon the transfer of the former, but prohibits the taxation of the succession to the latter? If so, upon what possible ground?

The distinction between tangible and intangible is a distinction, which so far as the constitutional validity of succession or transfer taxes imposed by the state of domicile are concerned, requires a better basis than any possible distinction between a government bond and a railroad bond. Corporate bonds are engraved upon the same kind of paper as Liberty Bonds. They have the same appearance to the eye. They are susceptible to the same touch. They are the same size. They are handled in the same manner, kept and dealt with in the same way.

The distinction between tangible and intangible property in respect to succession taxes must go deeper. It must have relation to other attributes which are associated with the idea of character and permanency of location. The Frick collection of paintings housed in New York, the furniture and fixtures in a residence, have attributes which cannot be attached to corporate bonds, kept, perhaps, for purposes of concealment as well as of freedom of control and having mobility and facility of transfer as the essential characteristic.

This was the *ratio decidendi* of decision in *Union Refrigerator Transit Co.* v. *Kentucky,* 199 U. S. 194, where the court said (p. 206):

> "The arguments in favor of the taxation of intangible property at the domicile of the owner have no application to tangible property. The fact that such property is *visible, easily found and difficult to conceal, and the tax readily collectible,* is so cogent an argument for its taxation at its situs, that of late there is a general concensus of opinion that it is taxable in the state where it is permanently located and employed and where it receives its entire protection, irrespective of the domicile of the owner." (Italics ours.)

FIFTH: In classifying tangible and intangible personal property for the purpose of the determination of the constitutional validity of a succession tax, there are public considerations of the highest importance.

A great part of the wealth of this country is today represented by bonds. Exemption from the state income taxes has made United States Bonds a favorite investment. Without exaggeration, it may be said that most large estates contain Liberty Bonds.

A decision by this court that the state of domicile cannot constitutionally impose a tax upon the succession to United States and other governmental and municipal bonds which are outside the state of domicile at the time of death will result in the escape of this class of property from death taxation. It can be safely said that all of the outstanding governmental and municipal bonds could be gathered into a few vaults located in the States of Florida or Nevada or the District of Columbia, in which no inheritance tax is imposed, and thus wholly avoid inheritance taxation.

There is no problem of double taxation involved in this case. The State of New York did not impose a tax upon the transfer of these bonds. Further, double taxation, as frequently stated by this court, is not prohibited by the Fourteenth Amendment. But, what is most important, the legislatures of many of the states, wisely recognizing the desirability of a uniform system of inheritance taxation and desirous of reaching this result by agreement—the only effective method—have adopted legislation under which inheritance taxes are not imposed upon property of this

sort of a nonresident, when the state of domicile does not impose such a tax upon such property of a nonresident.

Reference here may be made to the conference held in Washington in February, 1925, attended by delegates from twenty-five States and unofficial representatives of eight other States at which a committee was appointed to review the inheritance tax situation. This committee submitted its report to the Second National Conference on State and Inheritance Taxation held at New Orleans in November, 1925.

The report, after reviewing the chaotic condition that existed in the various systems of inheritance taxation among the several states recommended:

> "Intangible personal property should be taxed only by the state of the domicile of the decedent."

As a result of this conference reciprocal tax legislation has been enacted by many of the states. The effect of this legislation is that each state agrees not to tax intangible personal property of a decedent who was domiciled in another state if similar treatment is accorded by such state with respect to residents of the state enacting the law. The effect is that one state death tax, and only one, is exacted with respect to intangible personal property and that tax is paid to the state of the domicile of the deceased owner. New York was the first state to enact a reciprocal law. Pennsylvania followed next and shortly afterwards similar provisions were enacted by Massachusetts and Connecticut. At the present time the States of California, Connecticut, Illinois, Georgia, Maine, Maryland, New Hampshire, Ohio, Oregon and Pennsylvania have such re-

ciprocal tax statutes, while the States of Alabama, Florida and Nevada and the District of Columbia do not impose any inheritance tax and the States of Colorado, Delaware, Massachusetts, New Jersey, Rhode Island, Tennessee and Vermont do not tax intangible personal property of non-resident decedents. Today twenty states including most of the largest, most wealthy, and most populous states do not impose taxes upon the intangible personal property of non-residents, if the non-resident was domiciled in a state which has enacted similar legislation or does not tax the transfer of intangible property of a non-resident held within its borders. In this reciprocity movement Liberty Bonds have been treated as intangible property.

A decision that Liberty Bonds held outside the state at the time of death could not be taxed by the domicile of the owner would result in a breakdown of this reciprocity movement. The breakdown would follow from the fact that it would be possible to move the bonds to states which do not impose death taxes.

Liberty Bonds are necessarily included in such intangible property. These bonds, like other intangibles, constitute liquid wealth. They flow readily in economic channels and would find their way to those places where because of the absence of inheritance taxes, the return would be enhanced. There is no class of intangible personal property including Liberty Bonds that could not find a wide open road to tax evasion. The ultimate result could only be that in the end the States would find themselves compelled to abandon inheritance taxation for it would not be possible to maintain an adequate and rational system of inheritance taxation in the United States, without the power to tax the succession to such property.

The jurisdiction of the domicile is the only one which is in a position to secure the information necessary to levy a tax upon the transfer of a decedent's intangibles wherever held, and to enforce such a tax. Rarely does it happen that the administration can be avoided in the state of domicile, for it is there that the decedent has his real property and his tangible personal property; it is there that he is known and it is there that his personal representatives must submit themselves to the jurisdiction of the probate court.

We submit that there is no distinction between corporate and governmental bonds which requires this court to depart from its previous decision in *Carpenter* v. *Pennsylvania,* 17 How. 456, confirmed in *Orr* v. *Gilman,* 183 U. S. 278, and to extend the Fourteenth Amendment so as to render virtually impossible the collection of a succession tax upon governmental and municipal bonds by the state of the domicile.

In respect to cash, money and bank notes, the amount of the tax is inconsequential and this would ordinarily be the case. The question is one of the power of the state of domicile to impose a succession tax, and money, bank notes and cash are peculiarly attached to the person of the owner. They are mobile and easily concealed. The ease with which gold could be moved about and was formerly kept close to the owner is the fact which gave rise to the doctrine of *mobilia.*

There is no reason why this class of property should escape the taxing power of the state of domicile and why opportunities for its concealment should be multiplied.

Respectfully submitted,

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